

## EXHIBIT J

JUNE 8, 2020 - DETENTION HEARING TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
v. : Criminal No. 1:20-cr-18  
MELQUAN BARNETT :

Transcript of proceedings on June 8th, 2020,  
United States District Court, Erie, Pennsylvania,  
before Magistrate Judge Richard A. Lanzillo.

## **APPEARANCES:**

For the Government: U.S. Attorney's Office  
Christian A. Trabold, Esquire  
U.S. Courthouse  
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For the Defendant: Charles Kwalonue Sunwabe, Jr.  
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Court Reporter: Janis L. Ferguson, RPR, CRR  
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Proceedings recorded by mechanical stenography;  
transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 1:34 p.m.

3 (Proceedings by Zoom, Defendant present with counsel.)

4 THE COURT: Good afternoon. This is the time set  
5 for the detention hearing in the matter of United States  
6 versus Melquan Barnett.

7 Let me first begin by taking the appearances of  
8 counsel.

9 Attorney Trabold, good afternoon.

10 MR. TRABOLD: Good afternoon, Your Honor. Christian  
11 Trabold on behalf of the United States. And I'm here today  
12 accompanied by FBI Special Agent Cuba.

13 THE COURT: Very good. And Attorney Sunwabe, good  
14 afternoon.

15 MR. SUNWABE: Good afternoon, Your Honor. Charles  
16 Kwalonue Sunwabe, Junio,r on behalf of Mr. Melquan Barnett.

17 THE COURT: All right. Mr. Barnett, as I explained  
18 during the prior proceedings, the United States is seeking  
19 your detention pending trial in this matter. So I will turn  
20 to Attorney Trabold for proffer and evidence as he sees fit.

21 MR. TRABOLD: Your Honor, if I may, I believe that  
22 the defense should start, because I believe this is a  
23 presumption case in favor of detention. So it's incumbent  
24 upon the defense to present reasons why Mr. Barnett shouldn't  
25 be detained or some evidence in favor of his release in the

1 first instance.

2 THE COURT: I don't believe that there is a formal  
3 request for detention on file in this case. There was an oral  
4 motion. And this is proceeding under --

5 MR. TRABOLD: Your Honor, if I could just point you  
6 to the -- the subsection of the statute would be  
7 3142(e)(3)(C), where it says, "Any offense listed in Section  
8 2332(b)(5)(B)," and that lists a variety of different  
9 offenses. One of those would be the arson statute at Title  
10 18, United States Code, Section 844(i). And that offense  
11 carries a 20-year max.

12 So under the Bail Reform Act clause which I  
13 just indicated, that calls for a presumption in favor of  
14 detention.

15 THE COURT: And, Attorney Sunwabe, do you agree with  
16 that position; that this would be your burden to proceed,  
17 given the presumption that appears to apply?

18 MR. SUNWABE: Well, if that's what the law says, I  
19 will. But I was under the influence [sic] that the United  
20 States was supposed to proceed. It's rather delayed that Mr.  
21 Trabold is now, you know, punching the ball in my direction,  
22 saying, hey, you go.

23 I was under the impression that the United  
24 States was supposed to proceed to proffer or provide reasons  
25 as to why my client should be in detention. But if he's not

1 willing, I can rebut any statement he -- I can rebut the  
2 United States' position at this point. I'd be willing to do  
3 that, Your Honor.

4 THE COURT: Yes. And I believe that Attorney  
5 Trabold's position is correct. This does fall under the  
6 presumption provision of 3142. It's a light presumption, but  
7 it would be appropriate for the defense to proffer or offer  
8 evidence for release.

9 You may proceed, Attorney Sunwabe.

10 MR. SUNWABE: Your Honor, we -- let me begin by  
11 saying that we are currently living in an extraordinary time  
12 for two reasons. First, we have COVID-19, and we have  
13 widespread demonstration across these United States of America  
14 protesting what members of my client's community sees as  
15 patterns and practices of injustice, as has been for a very  
16 long time in this country.

17 And with respect to COVID-19, we all know the  
18 danger that it poses to our individual and collective health.

19 With that being the case, Your Honor, let me  
20 point out for the Court that my client is not alleged to have  
21 committed any crime that falls within the category of crimes  
22 listed on 3142(f).

23 Despite the position of the United States that  
24 an arson is a violent crime, we take the opposite direction.  
25 We do not believe that arson falls within the category of

1       crimes listed under 3142 Subsection (f).

2                  This issue has actually been addressed before  
3       by the Tenth Circuit, in a different circumstance, and I will  
4       state the name of the case for this Court. That's State  
5       versus Sala [sic], S-A-L-A-S --

6                  (Attorney Sunwabe asked for clarification by the  
7       reporter.)

8                  MR. SUNWABE: I was saying that in spite of the  
9       United States' position, we do not believe that arson is -- is  
10      a violent crime.

11                 And two points are significant here. It is  
12      alleged that Mr. Barnett either torched or attempted to torch  
13      the coffee shop in question. What the United States does not  
14      say in its Complaint was that the coffee shop was occupied at  
15      the time that Mr. Barnett is accused of trying to torch it.  
16      Okay? So I do not want that point to be lost on this Court.  
17      We're talking about a coffee shop that was not occupied by  
18      anyone at the time that the alleged incident occurred. We are  
19      not conceding that my client did it, but for the purposes of  
20      this argument, I'd just like to lay that out there on the  
21      record.

22                 The second thing is in State v. Sala [sic] --  
23      and I will be willing to provide the State -- I mean, the  
24      Court with the direct quotation. In that case, the Tenth  
25      Circuit made it clear that arson was not a crime of violence.

1 And as the Court held, it is not a crime of violence because  
2 it does not require as an element the use of force against the  
3 property of another.

4 Your Honor, myself and Mr. Trabold can choose  
5 to torch our car. That does not mean that we've met the  
6 element requirement of the violent crime. So arson is not a  
7 violent crime.

8 And the other thing I will add is that United  
9 States v. Sala [sic] dealt with another incident. However, a  
10 legal reasoning in United States v. Sala [sic] is applicable  
11 here.

12 Secondly, my client is not a flight risk. Let  
13 me point out to the Court here that Mr. Barnett responded to  
14 these charges by reaching out to me immediately after the  
15 demonstration. It was because of my own concern for my  
16 health, given that a demonstration had just taken place in  
17 Erie, I requested, now, look, stay put; I will reach out to  
18 State authorities, and I will turn you in. A person who wants  
19 to run from the law does not reach out to the law.

20 My client is willing, he's able, he wants to  
21 face these charges. He is not running from the law. He's not  
22 a flight risk. He has not -- he's not alleged to have  
23 committed a violent crime. He has not committed a crime with  
24 respect to a man or child. He has not committed a crime with  
25 respect to fraud. He has not committed any of the crimes

1 listed under 18 USC 3142(f), Your Honor.

2                   The United States cannot seek to detain my  
3 client on these accusations. The request for detention here  
4 appears to be political in nature, given the remarks in  
5 Pittsburgh.

6                   And I will point out to the Court as to why  
7 these demonstrations are happening. We are living in the  
8 planet when a member of -- of my client's community has said,  
9 we've had enough. We're over the police; we're the only  
10 person who fears tickets, appearing to break the law in these  
11 United States of America. And it is precisely for that reason  
12 that we're seeing peaceful gathering, peaceful demonstration  
13 across this country.

14                  Now, we have asked my client's mother, who is  
15 able and willing, to act as a third-party custodian until  
16 these matters are resolved within this court. Your Honor,  
17 we're asking this Court to release Mr. Barnett to the custody  
18 of his mom. We will be more than willing for him to be  
19 monitored by the Fed in whatever capacity the Fed deems  
20 necessary.

21                  But as of today, given the nature of COVID-19,  
22 given his own underlying healthcare reasons, health reasons  
23 and health concerns, it does not make -- it is not prudent to  
24 keep him incarcerated. He is from Erie. He voluntarily  
25 turned himself in. He will answer this Court. And we're

1 asking this Court to release him to the custody of his mom  
2 until this matter is resolved.

3                   Thank you, Your Honor.

4                   THE COURT: Thank you. Mr. Sunwabe. I will review  
5 State v. Salas, the case you cited from the Tenth Circuit.

6                   But if I were to disagree and find that the  
7 charge here -- the crime alleged, in fact, does fall within  
8 the presumption and is, in fact, a crime of violence, if I  
9 were to so find, I understand your argument to be in proffer,  
10 in response to the presumption, that -- first, that your  
11 client is not a flight risk. I see that he has significant  
12 family ties here in the Erie area and would submit to a  
13 custodial arrangement with his mother. And that in terms of  
14 ensuring the safety of the community, his criminal record and  
15 other attributes do not make him a threat to the community.  
16 And that, in any case, I could impose conditions of release  
17 that would reasonably assure the safety of the community and  
18 the public.

19                   Do I understand your position correctly?

20                   MR. SUNWABE: Absolutely, Your Honor.

21                   THE COURT: Okay, very good.

22                   Attorney Trabold, I'm going to reserve my  
23 decision on the presumption issue pending a full presentation  
24 of merits here. But I would ask you to state the Government's  
25 position at this time.

1 MR. TRABOLD: Yes, Your Honor.

2 I would offer by way of proffer a copy of the  
3 Criminal Complaint and accompanying affidavit that was filed  
4 in court that Your Honor signed. I've marked that as  
5 Government's Exhibit No. 1, and I had provided that previous  
6 to the start of the hearing by way of email to the Court and  
7 to defense counsel. We would ask that be admitted as  
8 Government's Exhibit No. 1.

9 THE COURT: It's a matter of record, and it is  
10 admitted.

11 MR. TRABOLD: Your Honor, our position is that the  
12 presumption in this case hasn't been rebutted, because all  
13 that Mr. Barnett has done is proffer the -- his mother as a  
14 third-party custodian. And if proffering your mother as your  
15 third-party custodian is enough to rebut the presumption in  
16 favor of detention, then there really isn't any presumption in  
17 favor of detention.

18 Clearly, a Defendant should have to do more  
19 than proffer his mother as his third-party custodian in order  
20 to overcome the presumption.

21 Separate and apart from the presumption issue,  
22 it's our position that the consideration of the 3142(g)  
23 factors counsels the Court to detain Mr. Barnett in this case.

24 The first factor is the nature and  
25 circumstances of the offense charged, and Congress has

1 specifically brought to the Court's attention crimes involving  
2 violence should be given special attention.

3 It's our position that -- I'm not familiar with  
4 the case that the counsel has brought to the Court's  
5 attention, but it's our position that if you look at the  
6 definitional section of the Bail Reform Act, Section 3156 of  
7 the Bail Reform Act defines a crime of violence as a offense  
8 that has as an element of the offense the use or attempted use  
9 of physical force against the property of another or a felony  
10 with a substantial risk that physical force against the  
11 property of another may be used in the course of committing  
12 the offense. That seems to be black letter what we have here.

13 Mr. Barnett is charged by way of Complaint with  
14 attempting to essentially burn down a coffee shop and/or  
15 causing fire at a coffee shop which appears, at a minimum, to  
16 be the attempted use of physical force against the property of  
17 another.

18 It really is of no consequence that the coffee  
19 shop at the time was not occupied by anybody, both because the  
20 definitional section in 3156 for crime of violence doesn't  
21 require that, but, also, I wanted to bring to the Court's  
22 attention that there are ten apartments above that coffee  
23 shop. So, obviously, the conduct alleged at a minimum had the  
24 chance of causing great physical injury to other individuals.

25 So it's our position that there has been some

1 case law as it relates to arson as it relates to the career  
2 offender provisions, but this definition under the Bail Reform  
3 Act is different than the career offender definitional  
4 provision and that it quite clearly falls under -- arson would  
5 quite clearly fall under the definition at Section 3156.

6 The second factor you're asked to consider is  
7 the weight of the evidence. And in this case, as the Criminal  
8 Complaint alleges, Mr. Barnett has been caught on multiple  
9 videos being the individual involved in the criminal activity.

10 It's also alleged in the Criminal Complaint  
11 that Mr. Barnett has distinctive tattoos on his body, which  
12 you can see in the videos, and that Mr. Barnett matches the  
13 height and general physical description of the individual  
14 involved in the the arson at the Cove + Forge [sic] Coffee  
15 Shop on May 30th of 2020. So there's ample reason for the  
16 Court to conclude that the weight of the evidence against  
17 Mr. Barnett is high.

18 The third factor that you're asked to consider  
19 is the history and characteristics of the individual.  
20 Mr. Barnett has been unemployed since May of 2019. The  
21 Pretrial Services report indicates that he has drug and mental  
22 health issues; that he has one prior juvenile adjudication in  
23 Erie County Juvenile Court for theft and criminal trespass,  
24 and that he has ten prior adult involvements with the adult  
25 criminal justice systems, which include false identification

1 to law enforcement.

2                   Lastly, you're asked to consider the nature and  
3 seriousness of the danger posed by Mr. Barnett's release.  
4 This case involves allegations of Mr. Barnett causing or  
5 attempting to cause a fire at a coffee shop during a riot in  
6 downtown Erie on May 30th of 2020. The location, as I  
7 mentioned, above which there are ten apartments.

8                   The nature and seriousness of the danger could  
9 not scarcely be greater, given the actions undertaken by  
10 Mr. Barnett, which are obviously, at a minimum, extremely  
11 dangerous. And also undertaken during a time of civil unrest.

12                  This case does not have anything to do with  
13 politics. It has everything to do with the allegations that  
14 are contained in the Criminal Complaint. And it's our  
15 position that when you consider in their totality the 3142(g)  
16 factors in this case, you should detain Mr. Barnett because  
17 this is a crime of violence for which the evidence against him  
18 is very strong. Mr. Barnett's history and characteristics  
19 should not give the Court confidence that he will abide by any  
20 conditions upon release. And, again, the nature and  
21 seriousness of the danger in this case is very high.

22                  I just want to be clear with one other matter,  
23 Your Honor. We are not seeking to detain Mr. Barnett based on  
24 the idea that he is a flight risk. Our argument in this case  
25 is that Mr. Barnett is a danger to the community based on all

1 the facts and circumstances that I just mentioned. And we  
2 don't think that a proffer or the ultimately release of  
3 Mr. Barnett to his mother as a third-party custodian, when his  
4 mother, I don't think, has appeared in court and offered any  
5 testimony in support of that proffer, is enough to overcome  
6 the presumption in the first instance, and, more importantly,  
7 is enough to justify his release.

8                   Thank you.

9                   THE COURT: Thank you, Attorney Trabold.

10                  Attorney Sunwabe, further proffer or argument  
11 on these points? And to Attorney Trabold's last statement, is  
12 Miss Hollingsworth available to the Court today?

13                  MR. SUNWABE: Miss Hollingsworth is not available to  
14 the Court today, Your Honor. She has an appointment that she  
15 had to go to. But I can make her available to Your Honor  
16 within an hour or two. She is not available to the Court  
17 today.

18                  Your Honor, one point that I would like to  
19 rebut is the assertion and part of the United States again  
20 that my client should be held because he is a danger to  
21 society.

22                  THE COURT: You may proceed.

23                  (Attorney Sunwabe asked for clarification by the  
24 reporter.)

25                  MR. SUNWABE: To Mr. Trabold's last point or

1 second-to-the-last point that Mr. Barnett is a danger to this  
2 society, I'd just like to point out that that assertion is not  
3 true.

4 We have before us the report from Pretrial  
5 Services, which does not point -- or paint a picture of a  
6 dangerous person. What it does show is that he has had in the  
7 past some health issues, including mental health, but he -- he  
8 has not been found -- or not been established to be a fact  
9 that he is a danger to this community. He's not.

10 He participated in a demonstration that the  
11 United States alleges that during that time he torched a  
12 coffee shop or attempted to torch a coffee shop. Beyond that,  
13 we really have nothing in his record that points towards a  
14 dangerous act, felonious act, or anything of that nature. He  
15 is not a danger to this society. He poses no danger to anyone  
16 whatsoever.

17 THE COURT: Yes. I see in the Pretrial Services  
18 report that Pretrial Services did perform an evaluation of  
19 Miss Hollingsworth's home and found it to be an appropriate or  
20 suitable third-party custodian/custodial relationship.

21 Attorney Trabold, how is it -- if I were to  
22 confine Mr. Barnett at home subject to electronic monitoring,  
23 as opposed to a curfew or other more limited restrictions, how  
24 is it that that would not adequately safeguard the public in  
25 this case?

1                   MR. TRABOLD: Well, Judge, we just think on balance,  
 2 given the 3142 factors, in light of the conduct that's alleged  
 3 and in light of Mr. Barnett's drug and alcohol -- or drug and  
 4 mental health issues -- excuse me -- and the fact that he has  
 5 a prior false identification to law enforcement, in addition  
 6 to multiple other prior involvements with the criminal justice  
 7 system, both as a juvenile and as an adult, we don't think the  
 8 placement of him in the community on electronic monitoring  
 9 under a -- I gather a home incarceration or a home detention  
 10 situation is appropriate, given the 3142(g) factors.

11                  THE COURT: Yes. I mean, if I were to release, it  
 12 would be subject to home detention and electronic monitoring  
 13 and limiting his ability to leave that home.

14                  I do not in any way diminish or underestimate the  
 15 seriousness of the charge in this particular case. And while  
 16 I will look at the case law and bring a reasoned and balanced  
 17 analysis to this particular issue, intuitively, in applying  
 18 some common sense, I mean, arson or attempted arson of an  
 19 establishment such as a coffee shop, especially one where  
 20 there are apartments in the area, is, in my mind, a crime of  
 21 violence. And whether we characterize it as a crime of  
 22 violence, it's one where the potential for not only property  
 23 damage is extremely high, but -- and although not part of the  
 24 charge here, you know, the potential for injury or death to  
 25 individuals is high.

1                   So I do have a very hard time accepting the  
2 characterization of this crime as anything less than very  
3 serious.

4                   But my responsibility and the charge that comes  
5 to me under the statute, assuming that the presumption applies  
6 and has been rebutted here, is to try to find conditions of  
7 release that reasonably safeguard the public. And if I can do  
8 that by putting an electronic monitor on Mr. Barnett's ankle  
9 and confining him to his mother's home, the law requires that  
10 I do so. So I'm going to have to take a look at that.

11                  I do want to look at the case cited by Attorney  
12 Sunwabe, so I'm going to take this matter under advisement and  
13 issue an Order before the end of the day either releasing  
14 Mr. Barnett subject to very strict conditions or a further  
15 order of detention, if I find that that's appropriate here.  
16 But I do want to take a look at what both counsel have cited.  
17 There appears to be some conflict in interpretation. I want  
18 to reconcile that appropriately.

19                  In light of my comments, anything further at  
20 this time, Attorney Trabold, that you'd like to offer to the  
21 Court?

22                  MR. TRABOLD: No, Your Honor.

23                  THE COURT: All right. Attorney Sunwabe, anything  
24 else you'd like to tell me before we adjourn?

25                  MR. SUNWABE: Yes, Your Honor. I would just like to

1 go back to State v. Sala [sic]. As I mentioned to you, that  
2 case deals with another matter, but the legal analysis is the  
3 same.

4 THE COURT: I will review it carefully before  
5 issuing my decision.

6 For the time being, though, we are adjourned.  
7 Thank you.

8 MR. SUNWABE: Thank you, Your Honor.

9 (Hearing concluded at 1:59 p.m.)

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C E R T I F I C A T E

16 I, JANIS L. FERGUSON, RPR, CRR, certify that the  
17 foregoing is a correct transcript from the record of  
proceedings in the above-entitled case.

18

19 \\$\\ Janis L. Ferguson 7/31/2020  
JANIS L. FERGUSON, RPR, CRR Date of Certification  
20 Official Court Reporter

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